

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Tirthankar Ghosh

CRM (M) 2360 of 2025

***Bhola Nath Das @ Bagla*
-versus-
*The State of West Bengal***

For the Petitioner : Mr. Sekhar Kr. Basu, Sr. Adv.,
Mr. Tapan Dutta Gupta, Adv.,
Ms. Puspa Rani Jaiswara, Adv.,
Mr. Pervej Anam, Adv.,
Mr. Santimay Bhattacharyya, Adv.,
Mr. Anirban Das, Adv.,
Ms. Afsana Khatoon, Adv.

For the State : Mr. Rudradipta Nandy, APP,
Mr. Abhinaba Mukherjee, Adv.

Heard On : 28.11.2025, 08.12.2025 & 16.12.2025

Judgement On : **23.12.2025**

Tirthankar Ghosh, J. :

The present application for bail has been preferred on behalf of the petitioner in connection with Uttarpara Police Station Case No. 158 of 2025 dated 30.07.2025, wherein the petitioner claims that inspite of the statutory period being over, his indefeasible right to be released on bail was not considered by the Learned Court. According to the petitioner, he was arrested on 04.08.2025, and the charge-sheet having been submitted on 14th of November 2025, he was entitled to be released on bail as the prosecution did not submit the charge-sheet within the statutory period of 90 days.

Mr. Basu, Learned Senior Advocate appearing for the petitioner submitted that it was the duty of the Learned Magistrate to inform and offer the right to the accused/petitioner relating to the right which has accrued by lapse of time when the charge-sheet was not filed within the statutory period. The same not having been done, the petitioner is entitled to be released on bail.

Another issue which has been canvassed by the Learned Senior Advocate appearing on behalf of the petitioner is that even though charge-sheet was claimed to have been submitted by the prosecution, as no cognizance was taken on the said charge-sheet, the subsequent remand orders passed by the Learned Magistrate and/or the Learned Sessions Court were bad in law as the Court did not detect any offence to have been made out within the statutory period. Thus, cognizance of offence not having been taken on the charge-sheet so submitted as claimed by the prosecution has also led to an indefeasible right being violated and the petitioner as such is entitled to be released on bail.

In order to fortify his submissions, Learned Senior Advocate relied upon the judgment of *Mohd. Iqbal Madar Sheikh v. State of Maharashtra*, reported in (1996) SCC (Cri) 202 and referred to paragraphs 11 and 12, which are set out herein below:

“11. So far the facts of the present case are concerned, Appellants 1 to 6 were taken into custody on 16-1-1993. The charge-sheet was submitted on 30-8-1993; obviously beyond the statutory period under Section 20(4)(b). There is nothing on record to show that

provisions of Section 20(4)(bb) were applied in respect of appellants. They had become entitled to be released on bail under proviso (a) to Section 167(2) of the Code read with Section 20(4)(b) of the TADA. But it is an admitted position that no application for bail on the said ground was made on behalf of the appellants. Unless applications had been made on behalf of the appellants, there was no question of their being released on ground of default in completion of the investigation within the statutory period. It is now settled that this right cannot be exercised after the charge-sheet has been submitted and cognizance has been taken, because in that event the remand of the accused concerned including one who is alleged to have committed an offence under TADA, is not under Section 167(2) but under other provisions of the Code. This has been specifically considered by a Constitution Bench of this Court in the case of Sanjay Dutt v. State through CBI(II) [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . It was said: (SCC p. 444, para 53)

“The ‘indefeasible right’ of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the

challan only by the provisions relating to the grant of bail applicable at that stage.”

As such now it is not open to the appellants to claim bail under proviso (a) to Section 167(2) of the Code. Admittedly charge-sheet has been submitted against the appellants, and they are in custody on the basis of orders of remand passed under other provisions of the Code and at this stage proviso (a) to Section 167(2) shall not be applicable.

12. *During hearing of the appeal, it was pointed out by the counsel appearing on behalf of the appellants that some courts in order to defeat the right of the accused to be released on bail under proviso (a) to Section 167(2) after expiry of the statutory period for completion of the investigation, keep the applications for bail pending for some days so that in the meantime, charge-sheets are submitted. Any such act on the part of any court cannot be approved. If an accused charged with any kind of offence becomes entitled to be released on bail under proviso (a) to Section 167(2), that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted so that the right which had accrued is extinguished and defeated. So far the present case is concerned, we are informed by the counsel for the appellants that a petition for grant of bail on merit had been filed which was rejected on 22-3-1993. But admittedly no petition for grant of bail after the expiry of the statutory period for the submission of the charge-sheet had been filed. There is no statement that any application for grant of bail had been filed on behalf of the appellants under proviso (a) to Section 167(2) after the expiry of the statutory period which application was kept pending till 30-8-1993. Now the appellants have forfeited their right to be released on bail under proviso (a) to Section 167(2) as they are in custody on basis of orders for remand passed under other provisions of the Code. In such a situation, we are left with no option*

but to dismiss these appeals. However, we direct that the trial of the appellants be expedited.”

Learned Senior Advocate has also relied upon the judgment of *Hussainara Khatoon (V) v. Home Secy., State of Bihar*, reported in (1980) 1 SCC 108 to fortify his contention that if the Learned Magistrate fails to offer the right which has accrued to the accused, in that case the accused/petitioner is entitled to be released on bail. Paragraph 3 is relevant for the said purpose which is quoted below:

“3. We find that pursuant to the directions given by us in our order dated March 9, 1979, Bageshwari Prasad Pandey, Superintendent of the Patna Central Jail has filed an affidavit dated April 4, 1979 along with a chart showing the dates on which Petitioners 1, 2 3 4, 5, 6, 7, 8, 9 and 17 confined in the Patna Central Jail prior to their release on personal bond, were produced before the Magistrates in compliance with the proviso to Section 167(2) of the Code of Criminal Procedure. A similar affidavit dated April 4, 1979 has also been filed by Pradeep Kumar Ganguly, Superintendent of Muzaffarpur Jail along with a chart showing the dates on which Petitioners 10, 11, 12, 13, 15, 16 and 18 who were previously confined in the Muzaffarpur Central Jail prior to their release on personal bond, were produced before the Magistrate in compliance with the requirement of the proviso to Section 167(2). Bhuwan Mohan Munda, Superintendent of the Ranchi Central Jail has also filed an affidavit dated April 12, 1979 together with a chart showing the dates on which some of the undertrial prisoners referred to in our order dated March 9, 1979 were produced before the Magistrates in compliance with the requirement of the proviso to Section 167(2). It is apparent from these charts that some of the petitioners and other undertrial prisoners referred to in these charts have been produced

numerous times before the Magistrates and the Magistrates have been continually making orders of remand to judicial custody. It is difficult to believe that on each of the countless occasions on which these undertrial prisoners were produced the Magistrates and the Magistrates made orders of remand, they must have applied their mind to the necessity of remanding those undertrial prisoners to judicial custody. We are also very doubtful whether on the expiry of 90 days or 60 days, as the case may be, from the date of arrest, the attention of the undertrial prisoners was drawn to the fact that they were entitled to be released on bail under proviso (a) of sub-section (2) of Section 167. When an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out to the undertrial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enabling him to apply for bail in exercise of his right under proviso (a) to sub-section (2) of Section 167 and the Magistrate must take care to see that the right of the undertrial prisoner to the assistance of a lawyer provided at State cost is secured to him and he must deal with the application for bail in accordance with the guidelines laid down by us in our Order dated February 12, 1979. We hope and trust that every Magistrate in the country and every State Government will act in accordance with this mandate of the Court. This is the constitutional obligation of the State Government and the Magistrates and we have no doubt that if this is strictly carried out, there will be considerable improvement in the situation in regard to undertrial prisoners and there will be proper observance of the rule of law.”

On the other hand, Mr. Nandy Learned Advocate appearing for the State has referred to the order dated 29.10.2025 and submitted that the

charge-sheet was filed within the statutory period, however, the Learned Magistrate did not take cognizance of the offence as the case diary was not produced. The subsequent orders reflect that an application was preferred for correcting the charge-sheet and finally, the cognizance was taken by the Learned Magistrate on 14.11.2025. On behalf of the State, it was emphasized that by filing the charge-sheet the investigating officer has complied with the provisions of law and as such the accused is not entitled to be released on statutory bail/default bail as is incorporated in the provisions of Section 187 of the BNSS, 2023.

I have taken into account the contentions advanced by the Learned Advocate appearing for the accused/petitioner as well as that of the State. So, far as the issue relating to taking of cognizance is concerned on the charge-sheet filed, the said issue was decided by the Hon'ble Supreme Court in *Suresh Kumar Bhikamchand Jain v. State of Maharashtra*, reported in (2013) 3 SCC 77, paragraph 18 of the said judgment is relevant which states that filing of the charge-sheet before the jurisdictional Court is sufficient compliance with the provisions of Section 167 (2) of the Cr.PC and whether cognizance is taken or not is immaterial as far as Section 167 (2) of the Cr.PC/187 BNSS, 2023 is concerned. For the purpose of the present case, paragraph 18 is relevant and set out as follows:

“18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section

167 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.”

In so far as the issue relating to the entitlement of an accused to be released on bail after the statutory period is over and the intimation not having been furnished to the accused, the same was considered by the Special Bench of this Hon’ble Court in *C.R.M. 146 of 2021*. The Larger Bench in its conclusion at paragraph 30, was of the opinion that as a cautionary

measure, the Special Court was to inform the accused. However, failure to intimate the accused of his right itself, would not entitle the accused to statutory bail unless he avails of such relief. Paragraph 30 (1) and (4) are relevant for the *purpose of the present case which is quoted below*:

“30. *In light of the aforesaid discussion, the issues are answered as follows:-*

1. *Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;*

4. *Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;”*

Having taken into account the position of law and the fact that mere submission of charge-sheet within the statutory period is sufficient compliance and the issue relating to cognizance is not relevant for the purposes of statutory bail, I am of the opinion that the order passed by the Learned Court do not suffer from any infirmity.

Consequently, the application for bail of the petitioner in C.R.M. (M) 2360 of 2025 is dismissed.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)